would permit the court to displace the jury. *In re Lerch's etc. Election* (1912) 21 Pa. Dist. 1113; *State* v. *Lazarus* (1885) 37 La. Ann. 314. Likewise, under the New York Code, false swearing by a judgment debtor on his examination in supplementary proceedings is not contempt for which he may be punished, unless "a right or remedy of a party litigant may be thereby defeated." *Bernheimer* v. *Kelleher* (1900) 31 Misc. 464, 64 N. Y. Supp. 409; N. Y. Code Civ. Proc. § 14; N. Y. Consol. Laws c. 30, § 753. By substantial authority, however, it seems certain that the crime of perjury does not merge the contempt, which is a separate and distinct wrong against the court as an organ of public justice, punishable by the court on summary conviction. *In re Steiner, supra; In re Fellerman, supra.* Fear that the power to punish for contempt would be a "potentiality for oppression", if the court were allowed to judge the falsity of testimony, prompted the holding in the instant case. It is submitted that the court erred in its failure to recognize that perjury, by its inherent nature, aims to thwart justice, to mould judicial opinion by lies, to hoodwink juries by fraud. Practically, it is impossible to determine how much weight has been given to perjured, apart from honest testimony. Moreover, even if the judge or the jury sees through the mendacity, the perjurer has nevertheless attempted to pervert the course of justice, and this act alone constitutes contempt and warrants summary punishment. The real danger to which the court alluded can be obviated by restricting the court's power to cases in which a witness makes an admission of perjury or in which the evidence of it is unquestionable. See *People* v. *Stone* (1912) 181 Ill. App. 475.

CONTRIBUTORY NEGLIGENCE—CHILDREN—PARENT'S NEGLIGENCE NOT IMPUTED TO CHILD.—The plaintiff, aged five, while crossing a street with his brother, aged seven, was injured by a motorcycle negligently ridden by an employee of the defendant. *Held,* the contributory negligence of the mother in allowing him to be exposed to the dangers of the street was not to be imputed to the child. *Zarzana* v. *Neve Drug Co.* (Cal. 1919) 179 Pac. 203.

Courts are divided on the question whether a parent's negligence can be imputed to his child so as to bar a recovery by the latter. See *Warren* v. *Manchester St. Ry.* (1900) 70 N. H. 352, 47 Atl. 735. The English rule is that a parent's negligence is so imputable. 1 Thompson, Negligence §§ 289, 290; *Waite* v. *North Eastern Ry.* (1858) El., Bl. & El. 719. In the United States, some courts follow the "New York Rule," see *Hartfield* v. *Roper* (N. Y. 1839) 21 Wend. 615, which bars recovery, 1 Thompson, *op. cit* §§ 292 *et seq.; Fitzgerald* v. *St. Paul, M. & M. Ry.* (1882) 29 Minn. 337, 13 N. W. 168, but the "Vermont Rule," *Robinson* v. *Cone* (1850) 22 Vt. 213, which allows recovery, is more generally followed. *Chicago City Ry.* v. *Wilcox* (1891) 138 Ill. 370, 27 N. E. 899; *Chicago G. W. Ry.* v. *Kowalski* (C. C. A. 1899) 92 Fed. 310; *Mullinax* v. *Hord* (1917) 174 N. C. 607, 94 S. E. 426. The former rule is based on the argument that an infant plaintiff must exercise the same degree of care as an adult, and, as a child is not *sui juris,* the care which is required of him must be exercised

for him by the person whom the law has designated to have control over him. *Holly* v. *Boston Gas Light Co.* (1857) 74 Mass. 123; *Fitzgerald* v. *St. Paul, M. & M. Ry., supra.* This would lead to the conclusion that an infant is by imputation liable to third persons for the negligent acts of his guardian,—a doctrine which has never been followed. See *Newman* v. *Phillipsburgh Horse-Car Ry. Co.* (1890) 52 N. J. L. 446, 19 Atl. 1102; *City of Evansville* v. *Senhenn* (1897) 151 Ind. 42, 47 N. E. 634. The "Vermont Rule" is based on the argument that a child should not be deprived of his legal rights by the negligence of a guardian who is imposed upon him by the law. *Newman* v. *Phillipsburgh Horse-Car Ry. Co., supra; Government Street R. R.* v. *Hanlon* (1875) 53 Ala. 70. The latter view is the more sound, as there is no injustice in requiring a wrongdoer to be answerable to one who cannot protect himself.

LIMITATION OF ACTIONS—RESCISSION OF CONTRACT OF SALE—WHEN STATUTE BEGINS TO RUN.—The plaintiff was induced by fraud to make a contract to sell goods to the defendants, delivery to be made in installments, with four months' credit on each delivery. After all the deliveries had been made the plaintiff discovered the fraud, and, repudiating the contract, repossessed itself of that part of the goods which had not already been disposed of by the defendants. More than six years after the last delivery, but less than the statutory period (N. Y. Code Civ. Proc., 1918, § 382, subd. 3) after the discovery of the fraud and the expiration of the contractual term of credit, this action was brought in trover for the value of the residue of the goods. *Held,* the action was barred by the Statute of Limitations. *American Woolen Co.* v. *Samuelsohn* (N. Y. Ct. App. 1919) 61 N. Y. L. J. 79.

The law often permits an injured party to adopt one or the other of two inconsistent theories of the same transaction on which to base his claim to legal relief, but once the plaintiff has made his election he cannot afterward change his position. *Whalen* v. *Stuart* (1909) 194 N. Y. 495, 87 N. E. 819; *Holman* v. *Updike* (1911) 208 Mass. 466, 94 N. E. 689. Thus, where a contract is tainted with fraud it may be rescinded by the defrauded party and treated as void *ab initio, Moller* v. *Tuska* (1881) 87 N. Y. 166; *Thurston* v. *Blanchard* (1839) 39 Mass. 18; or affirmed and made absolute; *Elgin* v. *Snyder* (1911) 60 Ore. 297, 118 Pac. 280; and an action in trover would bar an action in assumpsit on the contract, *Morris* v. *Rexford* (1859) 18 N. Y. 552; and *vice versa. Butler* v. *Hildreth* (1842) 46 Mass. 49; *Wachsmuth* v. *Sims* (Tex. Civ. App. 1895) 32 S. W. 821. While the institution of suit upon the one theory or the other is generally deemed conclusive evidence of the plaintiff's determination to stand or fall upon that view of the matter, *Whalen* v. *Stuart, supra; Holman* v. *Updike, supra,* an election may be evidenced by other acts on the part of the plaintiff. *Elgin* v. *Snyder, supra.* It would seem, therefore, that in the instant case the running of the statute should not be suspended for the stipulated term of credit, because the plaintiff cannot take advantage of any term of a contract which he has